

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>Illinois Bell Telephone Company</b>	)	
	)	<b>Docket No. 03-0323</b>
<b>Petition to Determine Adjustments to UNE Loop</b>	)	
<b>Rates Pursuant to Section 13-408 of the</b>	)	
<b>Illinois Public Utilities Act</b>	)	

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**SBC ILLINOIS' OPPOSITION TO Z-TEL/COVAD'S  
EMERGENCY PETITION FOR INTERLOCUTORY REVIEW**

Illinois Bell Telephone Company ("SBC Illinois" or the "Company"), by its attorneys, hereby files its Opposition to Z-Tel Communications, Inc.'s and Covad Communication Company's Emergency Petition for Interlocutory Review of the Administrative Law Judges' May 14, 2003 Ruling ("Z-Tel/Covad Petition").

1. On May 14, 2003, the Administrative Law Judges convened a status hearing to determine a schedule for this proceeding. The rate adjustments required by new Section 13-408 must go into effect within 30 days of its enactment (i.e., by June 9, 2003). At the status hearing, the Commission Staff proposed a schedule which would permit the Commission to reach a decision by that date. Although counsel for Z-Tel and Covad objected on the grounds that they wanted more time to conduct discovery, prepare their positions and cross-examine witnesses, at no time did they actually present an alternative schedule for the consideration of the Administrative Law Judges or the parties. At no time did they offer to waive any procedural steps in the Staff-proposed schedule that would have afforded them more time at the front end of the proceeding (e.g., the issuance of a Proposed Order and the opportunity to file Exceptions). (Tr. 38-39). In fact, the Administrative Law Judges made every effort to balance the interests of all parties within the constraints of the 30-day period established by the General Assembly for

this proceeding. Since, Z-Tel/Covad suggested no alternative, constructive or otherwise, there was nothing more the Administrative Law Judges could have done for them.

2. Z-Tel/Covad's Petition for Interlocutory Review bears a remarkable resemblance to their arguments at the status hearing – all rhetoric, no substance. Despite now having had several more days to develop an alternative scheduling proposal, they offer nothing whatsoever for the Commission to consider in terms of a substitute schedule. With a 30-day statutory deadline, it is incumbent on Z-Tel/Covad to explain how additional time for discovery, cross-examination and hearings could be accommodated within that timeframe. Since Z-Tel/Covad make no attempt to do so, SBC Illinois assumes that they are more interested in creating a “record” of their dissatisfaction with the schedule, than in actually accomplishing anything.<sup>1</sup> Z-Tel/Covad point to no error on the part of the Administrative Law Judges that would justify interlocutory review, and there was none.

3. It appears that Z-Tel/Covad fundamentally misunderstand the process which the General Assembly contemplated when it enacted Section 13-408. (Z-Tel/Covad Petition at 13). This is not a Section 9-201 rate proceeding initiated by the filing of a tariff. This is not a Section 9-250 rate investigation initiated by the Commission or by one of the parties. The purpose of this proceeding is to make two adjustments (i.e., for fill and depreciation) to SBC Illinois' existing UNE loop rates based on cost studies and methodologies used in Docket No. 02-0864. The General Assembly clearly viewed this process as very limited in scope and, therefore, directed that it be completed in 30 days, rather than some other time frame. Moreover, Section 13-408 imposes the obligation to make this rate adjustment on the *Commission alone*. The fact

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<sup>1</sup> Under the Commission's Rules of Practice, parties are not required to file a Petition for Interlocutory Review to preserve their objections to rulings by an Administrative Law Judge. 83 Ill. Adm. Code § 200.520(a). Even if Z-Tel/Covad are preparing for a future legal challenge, this Petition was completely unnecessary. Given the expedited nature of the proceeding, their time would have been better spent preparing their Comments.

that SBC Illinois filed its rate calculations in a Petition the next business day after Section 13-408 went into effect and the fact that the Administrative Law Judges adopted a schedule that allows interested parties to file Comments and Reply Comments on these calculations provides *more* “due process” rights than Section 13-408 requires, not *less*.

4. Furthermore, in their zeal to claim that their rights have been abridged, Z-Tel/Covad appear to have contracted sudden onset amnesia. Contrary to the impression they create in their Petition, Z-Tel/Covad were active parties in Docket No. 02-0864 and are familiar with SBC Illinois’ cost studies and methodologies. Staff and Intervenors were afforded *four months* in that docket for discovery. Z-Tel/Covad joined with McLeodUSA, TDS and several other CLECs in the so-called “CLEC Coalition.” The CLEC Coalition submitted a substantial amount of discovery to SBC Illinois, all of which SBC Illinois responded to. The suggestion that Z-Tel/Covad “had not even had the opportunity to retain an expert to review the proposed cost methodologies . . . much less begin the process of developing his/her expert opinion on such compliance” is patently ridiculous. As part of the CLEC Coalition, Z-Tel/Covad prefiled three separate pieces of direct testimony only two weeks ago in Docket No. 02-0864, including two that were sponsored by Michael Starkey, addressing SBC Illinois’ LoopCAT model, annual cost factors and fill factors. Based on the Proprietary Agreements signed by the parties in this docket, it appears that Mr. Starkey has been retained to evaluate SBC Illinois’ calculations under Section 13-408. Since Z-Tel/Covad were perfectly content with Mr. Starkey in Docket No. 02-0864, and since Mr. Starkey has had access to the cost models and all of the discovery in Docket No. 02-0864 for months now, SBC Illinois is at a loss to understand how Z-Tel/Covad can assert any harm.

5. In conclusion, Z-Tel/Covad have not demonstrated any error on the part of the Administrative Law Judges, have not requested any specific relief from the Commission and have not explained how that relief could be accommodated in the schedule.

WHEREFORE, in view of the foregoing, Z-Tel Communications, Inc.'s and Covad Communication Company's Emergency Petition for Interlocutory Review of the Administrative Law Judges' May 15, 2003 schedule should be denied.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

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One of Its Attorneys

Louise A. Sunderland  
Karl B. Anderson  
Illinois Bell Telephone Company  
225 West Randolph, Floor 25D  
Chicago, Illinois 60606  
(312) 727-6705  
(312) 727-2928

Theodore A. Livingston  
J. Tyson Covey  
Mayer Brown Rowe & Maw  
190 South LaSalle Street  
Chicago, IL 60603  
(312) 782-0600

**CERTIFICATE OF SERVICE**

I, Louise A. Sunderland, an attorney, certify that a copy of the foregoing **SBC ILLINOIS' OPPOSITION TO Z-TEL/COVAD EMERGENCY PETITION FOR INTERLOCUTORY REVIEW** was served on the following parties by U.S. Mail and/or electronic transmission on May 20, 2003.

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Louise A. Sunderland

**SERVICE LIST FOR DOCKET 03-0323**

Glennon P. Dolan  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 52701  
[gdolan@icc.state.il.us](mailto:gdolan@icc.state.il.us)

Leslie D. Haynes  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601-3104  
[lhaynes@icc.state.il.us](mailto:lhaynes@icc.state.il.us)

Mary C. Albert  
Allegiance Telecom of Illinois, Inc.  
1919 M Street NW, Suite 420  
Washington, DC 20036  
[mary.albert@algx.com](mailto:mary.albert@algx.com)

Melia Carter  
Covad Communications  
227 West Monroe Street, 20<sup>th</sup> Floor  
Chicago, IL 60606  
[mecarter@covad.com](mailto:mecarter@covad.com)

Randolph R. Clarke, Janice A. Dale,  
Susan L. Satter  
Illinois Attorney General's Office  
100 West Randolph, 11<sup>th</sup> Floor  
Chicago, IL 60601  
[rclarke@atg.state.il.us](mailto:rclarke@atg.state.il.us)  
[jdale@atg.state.il.us](mailto:jdale@atg.state.il.us)  
[ssatter@atg.state.il.us](mailto:ssatter@atg.state.il.us)

William J. Cobb III  
Covad Communications Company  
100 Congress Ave., Suite 2000  
Austin, TX 78701  
[bcobb@covad.com](mailto:bcobb@covad.com)

Joseph E. Donovan, Henry T. Kelly  
O'Keefe Ashendon Lyons & Ward  
30 North LaSalle Street  
Chicago, IL 60602  
[henrykelly@okeefe-law.com](mailto:henrykelly@okeefe-law.com)  
[joedonovan@okeefe-law.com](mailto:joedonovan@okeefe-law.com)

William A. Haas  
McLeodUSA  
6400 C Street SW, P.O. Box 3177  
Cedar Rapids, IA 52406-3177  
[whaas@mcleodusa.com](mailto:whaas@mcleodusa.com)

Matt C. Deering, Dennis K. Muncy,  
Joseph D. Murphy  
Meyer Capel  
306 West Church St., P.O. Box 6750  
Champaign, IL 61826  
[Mdeering@meyercafel.com](mailto:Mdeering@meyercafel.com)  
[dmuncy@meyercafel.com](mailto:dmuncy@meyercafel.com)  
[jmurphy@meyercafel.com](mailto:jmurphy@meyercafel.com)

Carmen Fosco  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601-3104  
[cfosco@icc.state.il.us](mailto:cfosco@icc.state.il.us)

Harry Gildea  
Snavelly King Majors O'Connor Lee  
1220 L Street NW, Suite 410  
Washington, DC 20005  
[hgildea@snavelly-king.com](mailto:hgildea@snavelly-king.com)

Allan Goldenberg, Mark N. Pera  
Cook Co. State's Attorney's Office  
69 West Washington, Suite 700  
Chicago, IL 60602  
[agolden@cookcountygov.com](mailto:agolden@cookcountygov.com)  
[mpera@cookcountygov.com](mailto:mpera@cookcountygov.com)

Matthew L. Harvey  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601-3104  
[mharvey@icc.state.il.us](mailto:mharvey@icc.state.il.us)

Richard E. Heatter  
MGC Communications, Inc.  
3301 North Buffalo Drive  
Las Vegas, NV 89129  
[rheatter@mpowercom.com](mailto:rheatter@mpowercom.com)

Rick Holzmacher  
Illinois Independent Telephone Assn  
212 Thames River Road  
Springfield, IL 62707  
[rickholzmacher@msn.com](mailto:rickholzmacher@msn.com)

Carol Keith  
NuVox Communications, Inc.  
16090 Swingley Ridge Rd., Suite 500  
Chesterfield, MO 63017  
[ckeith@nuvox.com](mailto:ckeith@nuvox.com)

Michael J. Lannon  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601-3104  
[mlannon@icc.state.il.us](mailto:mlannon@icc.state.il.us)

Julie B. Lucas  
Citizens Utility Board  
208 South LaSalle, Suite 1760  
Chicago, IL 60604  
[julucas@cuboard.org](mailto:julucas@cuboard.org)

Owen E. MacBride  
Schiff Hardin & Waite  
233 South Wacker Drive, Suite 6600  
Chicago, IL 60606  
[omacbride@schiffhardin.com](mailto:omacbride@schiffhardin.com)

M. Gavin McCarty  
Globalcom, Inc.  
333 West Wacker Drive, Suite 1500  
Chicago, IL 60606  
[gmccarty@global-com.com](mailto:gmccarty@global-com.com)

Frances McComb  
Talk America, Inc.  
6608 Route 202  
New Hope, PA 18938  
[franci@talk.com](mailto:franci@talk.com)

Julie Musselman  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
[jmusselm@icc.state.il.us](mailto:jmusselm@icc.state.il.us)

Peter Nyce  
Department of the Army  
Office of the Judge Advocate General  
901 North Stuart Street  
Arlington, VA 22203  
[peter.nyce@hqda.army.mil](mailto:peter.nyce@hqda.army.mil)

Douglas Price  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
[dprice@icc.state.il.us](mailto:dprice@icc.state.il.us)

David O. Rudd  
Gallatin River Communication  
625 South Second Street, Suite 103-D  
Springfield, IL 62704  
[dorudd@aol.com](mailto:dorudd@aol.com)

Kristen M. Smoot  
Illinois Consolidated Telephone  
121 South 17<sup>th</sup> Street  
Mattoon, IL 61938  
[kristen.smoot@rcn.net](mailto:kristen.smoot@rcn.net)

Mary Stephenson  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601-3104  
[mstephen@icc.state.il.us](mailto:mstephen@icc.state.il.us)

Darrell Townsley  
WorldCom  
205 North Michigan Ave., Suite 1100  
Chicago, IL 60601  
[darrell.townsley@wcom.com](mailto:darrell.townsley@wcom.com)

Ron Walters  
Z-Tel Communications, Inc.  
601 South Harbour Island Blvd.  
Tampa, FL 33602  
[rwalters@z-tel.com](mailto:rwalters@z-tel.com)